

RICHARD A. JONES (Bar No. 135248)
(rjones@cov.com)
COVINGTON & BURLING LLP
One Front Street
San Francisco, CA 94111
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Attorneys for
ROOTS READY MADE GARMENTS CO. W.L.L.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROOTS READY MADE GARMENTS CO.
W.L.L.,

Plaintiff,

v.

THE GAP, INC., a/k/a GAP, INC., GAP
INTERNATIONAL SALES, INC.,
BANANA REPUBLIC, LLC, OLD NAVY,
LLC,

Defendants.

Case No.: C 07 3363 CRB

PLAINTIFF'S APPLICATION PURSUANT
TO LOCAL CIVIL RULE 7-9 FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION

Date: N/A

Time: N/A

Place: Courtroom 8, 19th Floor

Judge: Charles R. Breyer

Trial Date: October 6, 2008

Pursuant to Local Civil Rule 7-9, Plaintiff Roots Ready Made Garments Co. W.L.L. ("Roots"), hereby submits this application for leave to file a motion for reconsideration of the Court's August 29, 2008 Order granting in part and denying in part Defendants' motion for summary judgment (the "Order") (Docket No. 227). Specifically, Roots seeks to clarify the Court's ruling with respect to one of the bases for its fraud claim – *i.e.*, that Defendants' defrauded Roots by misrepresenting the purpose of the International Sales Program ("ISP"), and failing to disclose that the program was designed to protect Gap's trademark rather than to establish and grow a profitable retail business. The Order does not address this aspect of the fraud claim.

Local Rule 7-9 authorizes a motion for reconsideration of an interlocutory order where the order fails “to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.” Here, the Order fails to consider the facts and dispositive legal arguments Roots presented in support of one of its fraud claims.

In its opposition to Gap’s motion for summary judgment (Docket No. 195) Roots argued that Gap defrauded Roots in three separate ways:

1. Gap falsely promised to grant Roots distribution rights in the Middle East under the ISP Program (the “Distribution Rights Claim”);
2. Gap falsely promised to make Roots a Gap franchisee in the Middle East (the “Franchise Claim”); and
3. Gap misrepresented the nature and purpose of the ISP program by failing to disclose that the program was intended to protect Gap’s trademarks and “not to drive revenue or sales” (the “Fraudulent Concealment Claim”).

Opp’n Br. at 19-21. The Order expressly dismissed the Distribution Rights Claim on parol evidence grounds, and permitted the Franchise Claim to proceed to trial. Order at 11-13. However, the decision does not address the Fraudulent Misrepresentation Claim. The Court’s rationale for dismissing the Distribution Rights Claim under the parol evidence rule – that the misrepresentations underlying that claim “contradict the written ISP agreement,” Order at 12 – has no application to the Fraudulent Concealment Claim. Indeed, the written ISP contracts are entirely silent on the purpose of the ISP program.

Accordingly, Roots respectfully requests leave to file a motion for reconsideration of the Order to the extent it fails to address the Fraudulent Concealment Claim.

DATED: September 12, 2008

COVINGTON & BURLING

By: /s/
RICHARD A. JONES

Attorneys for
ROOTS READY MADE GARMENTS CO.
W.L.L.